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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LUZ ZENDEJAS,

Plaintiff,

vs.

JOSE AVILA D/B/A MORAZAN; S.I.T.,
LLC; and DOES 1 to 10,
Defendants.

Case No.:

COMPLAINT FOR INJUNCTIVE
RELIEF AND DAMAGES FOR DENIAL
OF CIVIL RIGHTS OF A DISABLED
PERSON IN VIOLATIONS OF

1. AMERICANS WITH DISABILITIES
ACT, 42 U.S.C. §12131 et seq.;

2. CALIFORNIA'S UNRUH CIVIL
RIGHTS ACT;

3. CALIFORNIA'S DISABLED
PERSONS ACT;

4. CALIFORNIA HEALTH & SAFETY
CODE;

5. NEGLIGENCE

Plaintiff LUZ ZENDEJAS ("Plaintiff") complains of Defendants JOSE AVILA D/B/A MORAZAN; S.I.T., LLC; and DOES 1 to 10 ("Defendants") and alleges as follows:

PARTIES

1. Plaintiff is a California resident with a physical disability. Plaintiff is diagnosed with multiple sclerosis which resulted in nerve damage and is substantially

1 limited in her ability to walk. Plaintiff requires the use of a wheelchair at all times when
2 traveling in public.

3 2. Defendants are, or were at the time of the incident, the real property owners,
4 business operators, lessors and/or lessees of the real property for a restaurant
5 (“Business”) located at or about 15700 Vanowen St., Lake Balboa, California.

6 3. The true names and capacities, whether individual, corporate, associate or
7 otherwise of Defendant DOES 1 through 10, and each of them, are unknown to Plaintiff,
8 who therefore sues said Defendants by such fictitious names. Plaintiff will ask leave of
9 Court to amend this Complaint when the true names and capacities have been
10 ascertained. Plaintiff is informed and believes, and, based thereon, alleges that each such
11 fictitiously named Defendants are responsible in some manner, and therefore, liable to
12 Plaintiff for the acts herein alleged.

13 4. Plaintiff is informed and believes, and thereon alleges that, at all relevant
14 times, each of the Defendants was the agent, employee, or alter-ego of each of the other
15 Defendants, and/or was acting in concert with each of the other Defendants, and in doing
16 the things alleged herein was acting with the knowledge and consent of the other
17 Defendants and within the course and scope of such agency or employment relationship.

18 5. Whenever and wherever reference is made in this Complaint to any act or
19 failure to act by a defendant or Defendants, such allegations and references shall also be
20 deemed to mean the acts and failures to act of each Defendant acting individually, jointly
21 and severally.

22 **JURISDICTION AND VENUE**

23 6. The Court has jurisdiction of this action pursuant to 28 USC §§ 1331 and
24 1343 for violation of the Americans with Disabilities Act of 1990, (42 USC §12101, *et*
25 *seq.*).

26 7. Pursuant to pendant jurisdiction, attendant and related causes of action,
27 arising from the same nucleus of operating facts, are also brought under California law,
28

1 including, but not limited to, violations of California Civil Code §§51, 51.5, 52(a), 52.1,
2 54, 54., 54.3 and 55.

3 8. Plaintiff's claims are authorized by 28 USC §§ 2201 and 2202.

4 9. Venue is proper in this court pursuant to 28 USC §1391(b). The real
5 property which is the subject of this action is located in this district, Los Angeles County,
6 California, and that all actions complained of herein take place in this district.

7 **FACTUAL ALLEGATIONS**

8 10. In or about August of 2023, Plaintiff went to the Business.

9 11. The Business is a restaurant business establishment, open to the public, and
10 is a place of public accommodation that affects commerce through its operation.
11 Defendants provide a restroom for customers.

12 12. While attempting to enter the Business during each visit, Plaintiff personally
13 encountered a number of barriers that interfered with her ability to use and enjoy the
14 goods, services, privileges, and accommodations offered at the Business.

15 13. To the extent of Plaintiff's personal knowledge, the barriers at the Business
16 included, but were not limited to, the following:

17 a. Defendants failed to comply with the federal standard for the
18 restroom. The restroom was not accessible and violated various
19 American with Disability Act Accessibility Guideline ("ADAAG")
20 requirements, including but not limited to:

- 21 a. toilet flush;
22 b. doorknob and lock; and
23 c. sink pipe insulation

24 14. These barriers and conditions denied Plaintiff full and equal access to the
25 Business and caused Plaintiff difficulty and frustration. Plaintiff wishes to return and
26 patronize the Business; however, Plaintiff is deterred from visiting the Business because
27 her knowledge of these violations prevents her from returning until the barriers are
28 removed.

1 such goods, services, facilities, privileges, advantages, or
2 accommodations. 42 U.S.C. § 12182(b)(2)(A)(ii).

3 b. A failure to take such steps as may be necessary to ensure that no
4 individual with a disability is excluded, denied services, segregated or
5 otherwise treated differently than other individuals because of the
6 absence of auxiliary aids and services, unless the entity can
7 demonstrate that taking such steps would fundamentally alter the
8 nature of the good, service, facility, privilege, advantage, or
9 accommodation being offered or would result in an undue burden. 42
10 U.S.C. § 12182(b)(2)(A)(iii).

11 c. A failure to remove architectural barriers, and communication barriers
12 that are structural in nature, in existing facilities, and transportation
13 barriers in existing vehicles and rail passenger cars used by an
14 establishment for transporting individuals (not including barriers that
15 can only be removed through the retrofitting of vehicles or rail
16 passenger cars by the installation of a hydraulic or other lift), where
17 such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv).

18 d. A failure to make alterations in such a manner that, to the maximum
19 extent feasible, the altered portions of the facility are readily
20 accessible to and usable by individuals with disabilities, including
21 individuals who use wheelchairs or to ensure that, to the maximum
22 extent feasible, the path of travel to the altered area and the
23 bathrooms, telephones, and drinking fountains serving the altered
24 area, are readily accessible to and usable by individuals with
25 disabilities where such alterations to the path or travel or the
26 bathrooms, telephones, and drinking fountains serving the altered area
27 are not disproportionate to the overall alterations in terms of cost and
28 scope. 42 U.S.C. § 12183(a)(2).

1 21. Toilet flush controls shall be hand operated or automatic. Hand operated
2 flush controls shall comply with 309. Flush controls shall be located on the open side of
3 the water closet. 2010 ADA Standards § 604.6.

4 22. Here, Defendants failed to install a proper flush control as the one provided
5 was not installed on the open side.

6 23. Handles, pulls, latches, locks, and other operating devices on accessible
7 doors shall have a shape that is easy to grasp with one hand and does not require tight
8 grasping, tight pinching, or twisting of the wrist to operate. Lever-operated mechanisms,
9 push-type mechanisms, and U-shaped handles are acceptable designs. When sliding doors
10 are fully open, operating hardware shall be exposed and usable from both sides.
11 Hardware required for accessible door passage shall be mounted no higher than 48 in
12 (1220 mm) above finished floor. 1991 ADA Standards § 4.13.9.

13 24. Here, Defendants failed to provide accessible handle and locks on the
14 restroom door. The door consisted of a twist mechanism on the doorknob that was
15 difficult to grasp and operate without a proper handle. The lock requires tight pinching to
16 operate, and the doorknob requires twisting of the wrist to operate.

17 25. Water supply and drainpipes under lavatories and sinks shall be insulated or
18 otherwise configured to protect against contact. There shall be no sharp or abrasive
19 surfaces under lavatories and sinks. 2010 ADA Standards § 606.5.

20 26. Here, Defendants failed to properly insulate the drainpipes under the sink.

21 27. A public accommodation shall maintain in operable working condition those
22 features of facilities and equipment that are required to be readily accessible to and usable
23 by persons with disabilities by the Act or this part. 28 C.F.R. 35.211(a).

24 28. By failing to maintain the facility to be readily accessible and usable by
25 Plaintiff, Defendants are in violation of Plaintiff's rights under the ADA and its related
26 regulations.

27 29. The Business has denied and continues to deny full and equal access to
28 Plaintiff and to other people with disabilities. Plaintiff has been and will continue to be

1 discriminated against due to the lack of accessible facilities, and therefore, seeks
2 injunctive relief to alter facilities to make such facilities readily accessible to and usable
3 by individuals with disabilities.

4 **SECOND CAUSE OF ACTION**

5 **VIOLATION OF THE UNRUH CIVIL RIGHTS ACT**

6 30. Plaintiff incorporates by reference each of the allegations in all prior
7 paragraphs in this complaint.

8 31. California Civil Code § 51 states, “All persons within the jurisdiction of this
9 state are free and equal, and no matter what their sex, race, color, religion, ancestry,
10 national origin, disability, medical condition, genetic information, marital status, sexual
11 orientation, citizenship, primary language, or immigration status are entitled to the full
12 and equal accommodations, advantages, facilities, privileges, or services in all business
13 establishments of every kind whatsoever.”

14 32. California Civil Code § 52 states, “Whoever denies, aids or incites a denial,
15 or make any discrimination or distinction contrary to Section 51, 51.5, or 51.6, is liable
16 for each and every offense for the actual damages, and any amount that may be
17 determined by a jury, or a court sitting without a jury, up to a maximum of three times the
18 amount of actual damage but in no case less than four thousand dollars (\$4,000) and any
19 attorney’s fees that may be determined by the court in addition thereto, suffered by any
20 person denied the rights provided in Section 51, 51.5, or 51.6.

21 33. California Civil Code § 51(f) specifies, “a violation of the right of any
22 individual under federal Americans with Disabilities Act of 1990 (Public Law 101-336)
23 shall also constitute a violation of this section.”

24 34. The actions and omissions of Defendants alleged herein constitute a denial
25 of full and equal accommodation, advantages, facilities, privileges, or services by
26 physically disabled persons within the meaning of California Civil Code §§ 51 and 52.
27 Defendants have discriminated against Plaintiff in violation of California Civil Code §§
28 51 and 52.

1 35. The violations of the Unruh Civil Rights Act caused Plaintiff to experience
2 difficulty, discomfort, or embarrassment. The Defendants are also liable for statutory
3 damages as specified in California Civil Code §55.56(a)-(c).

4 **THIRD CAUSE OF ACTION**

5 **VIOLATION OF CALIFORNIA DISABLED PERSONS ACT**

6 36. Plaintiff incorporates by reference each of the allegations in all prior
7 paragraphs in this complaint.

8 37. California Civil Code § 54.1(a) states, “Individuals with disabilities shall be
9 entitled to full and equal access, as other members of the general public, to
10 accommodations, advantages, facilities, medical facilities, including hospitals, clinics,
11 and physicians’ offices, and privileges of all common carriers, airplanes, motor vehicles,
12 railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes
13 of transportation (whether private, public, franchised, licensed, contracted, or otherwise
14 provided), telephone facilities, adoption agencies, private schools, hotels, loading places,
15 places of public accommodations, amusement, or resort, and other places in which the
16 general public is invited, subject only to the conditions and limitations established by
17 law, or state or federal regulation, and applicable alike to all persons.

18 38. California Civil Code § 54.3(a) states, “Any person or persons, firm or
19 corporation who denies or interferes with admittance to or enjoyment of public facilities
20 as specified in Sections 54 and 54.1 or otherwise interferes with the rights of an
21 individual with a disability under Sections 54, 54.1 and 54.2 is liable for each offense for
22 the actual damages, and any amount as may be determined by a jury, or a court sitting
23 without a jury, up to a maximum of three times the amount of actual damages but in no
24 case less than one thousand dollars (\$1,000) and any attorney’s fees that may be
25 determined by the court in addition thereto, suffered by any person denied the rights
26 provided in Section 54, 54.1, and 54.2.

27 39. California Civil Code § 54(d) specifies, “a violation of the right of an
28 individual under Americans with Disabilities Act of 1990 (Public Law 101-336) also

1 constitute a violation of this section, and nothing in this section shall be construed to limit
2 the access of any person in violation of that act.

3 40. The actions and omissions of Defendants alleged herein constitute a denial
4 of full and equal accommodation, advantages, and facilities by physically disabled
5 persons within the meaning of California Civil Code § 54. Defendants have
6 discriminated against Plaintiff in violation of California Civil Code § 54.

7 41. The violations of the California Disabled Persons Act caused Plaintiff to
8 experience difficulty, discomfort, and embarrassment. The Defendants are also liable for
9 statutory damages as specified in California Civil Code §55.56(a)-(c).

10 **FOURTH CAUSE OF ACTION**

11 **CALIFORNIA HEALTH & SAFETY CODE § 19955, et seq.**

12 42. Plaintiff incorporates by reference each of the allegations in all prior
13 paragraphs in this complaint.

14 43. Plaintiff and other similar physically disabled persons who require the use of
15 a wheelchair are unable to use public facilities on a “full and equal” basis unless each
16 such facility is in compliance with the provisions of California Health & Safety Code §
17 19955 et seq. Plaintiff is a member of the public whose rights are protected by the
18 provisions of California Health & Safety Code § 19955 et seq.

19 44. The purpose of California Health & Safety Code § 1995 et seq. is to ensure
20 that public accommodations or facilities constructed in this state with private funds
21 adhere to the provisions of Chapter 7 (commencing with Section 4450) of Division 5 of
22 Title 1 of the Government Code. The code relating to such public accommodations also
23 require that “when sanitary facilities are made available for the public, clients, or
24 employees in these stations, centers, or buildings, they shall be made available for
25 persons with disabilities.

26 45. Title II of the ADA holds as a “general rule” that no individual shall be
27 discriminated against on the basis of disability in the full and equal enjoyment of goods
28 (or use), services, facilities, privileges, and accommodations offered by any person who

owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a). Further, each and every violation of the ADA also constitutes a separate and distinct violation of California Civil Code §§ 54(c) and 54.1(d), thus independently justifying an award of damages and injunctive relief pursuant to California law, including but not limited to Civil Code § 54.3 and Business and Professions Code § 17200, et seq.

FIFTH CAUSE OF ACTION

NEGLIGENCE

46. Plaintiff incorporates by reference each of the allegations in all prior paragraphs in this complaint.

47. Defendants have a general duty and a duty under the ADA, Unruh Civil Rights Act and California Disabled Persons Act to provide safe and accessible facilities to the Plaintiff.

48. Defendants breached their duty of care by violating the provisions of ADA, Unruh Civil Rights Act and California Disabled Persons Act.

49. As a direct and proximate result of Defendants' negligent conduct, Plaintiff has suffered damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for relief and judgment against Defendants as follows:

1. For preliminary and permanent injunction directing Defendants to comply with the Americans with Disability Act and the Unruh Civil Rights Act;

2. Award of all appropriate damages, including but not limited to statutory damages, general damages and treble damages in amounts, according to proof;

3. Award of all reasonable restitution for Defendants' unfair competition practices;

4. Reasonable attorney's fees, litigation expenses, and costs of suit in this action;

5. Prejudgment interest pursuant to California Civil Code § 3291; and

1 6. Such other and further relief as the Court deems just and proper.

2 **DEMAND FOR TRIAL BY JURY**

3 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby
4 demands a trial by jury on all issues so triable.

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6 Dated: November 21, 2023

SO. CAL. EQUAL ACCESS GROUP

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9 By: /s/ Jason J. Kim
10 Jason J. Kim, Esq.
11 Attorneys for Plaintiff
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